

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS,
EASTERN DISTRICT**

RIVERPORT INSURANCE COMPANY,)
)
Plaintiff,)
)
v.) Case No. 1:20-cv-02679
)
)
AREA #1 OUTDOOR CLUB, an Illinois)
non-profit corporation, and SHIRLEY COLE,)
individually and as Special Administrator of)
the Estate of Jerry A. Cole, deceased,)
)
Defendants.)

COMPLAINT FOR DECLARATORY JUDGMENT

NOW COMES Plaintiff Riverport Insurance Company, by and through its attorneys Terry A. Fox and Christopher L. Gallinari of Flaherty and Youngerman, P.C., and for its complaint against Defendants, states as follows:

Venue & Jurisdiction

1. Riverport Insurance Company is a foreign insurer incorporated in Iowa, with its principle place of business in Minnesota;
2. Riverport Insurance Company (“Riverport”) issued a renewal workers compensation/employers liability insurance policy at issue in this case, policy no. WC-12-87-006525-07, effective 6/6/2016 to 6/6/2017. That assigned risk program policy was issued to Area #1 Outdoor Club. A true and correct copy of that insurance policy is attached hereto as Exhibit 1.

3. Defendant Area #1 Outdoor Club is a non-profit social club organized and incorporated under Illinois law, with its place of business in Will County, Illinois.

4. Defendant Shirley Cole is a citizen of Illinois. She resides in Will County. Ms. Cole is named as a necessary party against whom no recovery is sought, and is named merely to be bound by the judgment. Ms. Cole is the surviving widow of Jerry A. Cole.

5. Venue is proper in this Court because one or more defendants resides within the geographic area of this Court, and because the insurance policy at issue was delivered to the insured within this District.

6. This action is brought pursuant to Fed. R. Civ. Pro. 57 and 28 U.S.C. 2201(a) for a declaratory judgment that the insurance policy at issue does not oblige the insurer to respond in any manner, including defending the insured Defendant Area #1 against the allegations and claims asserted by Ms. Shirley Cole in any forum and in any capacity.

7. Jurisdiction exists in this Court pursuant to 28 U.S.C. § 1332 because the Plaintiff is a citizen of a different state than the Defendants, the latter are citizens of Illinois. The amount in controversy exceeds \$75,000.

8. The instant dispute arises out of the death of Jerry A. Cole on or about April 22, 2017.

9. Defendant Shirley Cole seeks to recover in excess of \$50,000 by way of her Will County lawsuit, Case No. 19 L 302. A true and correct copy of the Complaint and accompanying affidavit of value required by Illinois Supreme Court Rule 222(b) are attached hereto as Exhibit 2. The filing in the Illinois Workers Compensation Commission by Cole presumably seeks recovery of death benefits not to exceed the lesser of \$500,000 or 25 years of weekly benefits based on a percentage of decedent's average salary. 820 ILCS 305/7.

10. Defendant Area #1 Club tendered the claims to Plaintiff for a defense.

The Will County Lawsuit

11. On April 9, 2019, Shirley Cole, as Special Administrator of the Estate of Jerry A. Cole, filed suit against Area #1 Outdoor Club. That lawsuit was assigned docket number 19 L 302 by the Circuit Court of the Twelfth Judicial Circuit, Will County, Illinois. A true and correct copy of the Complaint in the Will County lawsuit is attached hereto as Exhibit 2.

12. Ms. Cole in her Complaint alleged Jerry Cole was a member of Defendant Area #1. Exhibit 2, ¶5. As a member, she alleged that it was her husband's duty to clear trees and brush to prepare for camping season. Id., at ¶7. On April 22, 2017, Mr. Cole was a bystander watching two other members remove a large tree on the Area #1 Outdoor Club's grounds. Id., ¶9.

13. The tree that the other members were working to cut down, while it was being pulled via rope, unexpectedly snapped off and struck Mr. Cole in the back of the head, killing him. Exh. 2, ¶12.

14. The Will County Complaint allegations include that Area #1 owed Shirley Cole's husband the duty of reasonable care and safety, that it breached that duty by failing to use qualified personnel to remove large trees on its grounds, failed to pay for qualified personnel to handle tree removal, insisted and relied on its members to remove dead and dying trees even though it knew the members were not qualified to remove such trees nor did they have adequate equipment, and failed to supervise its members in tree removal. Exh. 2, ¶20.

15. Ms. Cole seeks recovery under the Illinois Wrongful Death Act for herself and her two daughters, as surviving heirs who were dependents of Mr. Cole under that Act, of an

unlimited amount above the \$50,000 threshold for filing in Law Division of the Illinois state court system.

Jerry Cole Rejected Workers Compensation Coverage as Allowed by Illinois Law

16. The Officers of Area #1 Outdoor Club submitted their “Employee’s Notice to Reject Coverage Under Illinois Workers Compensation Law” to Riverport, and which form provides in relevant part as follows:

As of 12:01 a.m. effective on the date signed below, the undersigned sole proprietor, partner or corporate officer rejects the right to claim benefits for accidental injuries sustained, arising out of and in the course of employment according to the provisions of the Illinois Workers Compensation Act.

This notice of rejection of coverage according to the provisions of the Illinois Workers Compensation Act remains in effect until further notice.

A true and correct copy of this 2-page form is attached hereto as Exhibit 3. This form was previously completed and submitted by the insured for previous policies issued by Riverport. Submission of this completed form resulted in Endorsement WC 12 03 07 set forth below being attached to and made part of the policy.

17. This form in Exhibit 2 was signed by Jerry A. Cole as President of the Area #1 Outdoor Club. Exh. 3. Other officers also signed the form.

18. This form was signed by Jerry A. Cole on June 7, 2016.

19. Endorsement WC 12 03 07, entitled “Illinois Sole Proprietors, Partners, Officers, Members of Limited Liability Companies and Other Excluded Employees and Employments Exclusion Endorsement” was attached to Policy WC-12-87-006525-07. The Endorsement provides, in relevant part:

Part One – Workers Compensation Insurance and Part Two – Employers Liability Insurance of the policy do not apply to any persons shown in the Schedule below.

The premium basis for the policy does not include the remuneration of such persons.

* * * *

SCHEDULE

Don Clavey

Jerry Cole

Jim Togliatti

TED JOYCE

All other terms and conditions of this policy remain unchanged.

Exh. 1.

COUNT I: Part One – Workers Compensation – No Coverage

20. Allegations in paragraphs 1-19 are incorporated as if set forth verbatim herein.

21. Endorsement WC 12 03 07 precludes coverage pursuant to its terms and 820 ILCS 305/3(17)(b) & (20), for the Workers Compensation Claim filed on behalf of Ms. Shirley Cole, Case Number 20 WC 008932. A true and correct copy of the "Notice: Case Filed" form supplied to Riverport is attached hereto as Exhibit 4.

22. In addition, Riverport policy at Part One provides, in relevant part:

B. We Will Pay

We will pay promptly when due the benefits required of you by the workers compensation law.

C. We Will Defend

We have the right and duty to defend at our expense any claim, proceeding or suit against you for benefits payable by this

insurance. We have the right to investigate and settle these claims, proceedings or suits.

We have no duty to defend a claim, proceeding or suit that is not covered by this insurance.

Exh. 1, Form WC 00 00 00 C (Ed.7-11), page 1 of 6.

23. Endorsement WC 12 03 07 when read with the “we will pay” and “we will defend” policy language above, results in no coverage for defense or indemnity because Mr. Cole is not an insurable employee within the terms of the insurance policy and as provided by the Illinois Legislature.

COUNT II - Employers Liability - No Coverage

24. Allegations in paragraphs 1-19 are incorporated as if set forth verbatim herein.

25. Part Two of the insurance policy coverage provides Employers Liability coverage, beginning on Page 2 of policy number WC-12-87-006525-07, found in Exhibit 1 attached hereto. The insuring agreement provides, in relevant part, as follows:

A. How This Insurance Applies

This employers liability insurance applies to bodily injury by accident or bodily injury by disease. Bodily injury includes resulting death.

1. The bodily injury must arise out of and in the course of the insured employee’s employment by you.

* * * *

B. We Will Pay

We will pay all sums that you legally must pay as damages because of bodily injury to your employees, provided the bodily injury is covered by this Employers Liability Insurance.

The damages we will pay, where recovery is permitted by law, include damages:

1. For which you are liable to a third-party by reason of a claim or suit against you by that third-party to recover the damages claimed against such party as a result of injury to your employee;

* * * *

3. For consequential bodily injury to a spouse, child, parent, brother or sister of the injured employee; provided that these damages are the direct consequence of bodily injury that arises out of and in the course of the injured employee's employment by you; and
4. Because of bodily injury to your employee that arises out of and in the course of employment, claimed against you in a capacity other than as employer.

26. The injuries suffered by Jerry Cole do not arise out of any employment he had with Area #1 Outdoor Club. The Will County complaint alleges that Cole was a member, not an employee, nor do the facts alleged indicate he was doing any work. He was "at all times relevant" "a bystander watching two other Outdoor Club members[.]" Exh. 2, ¶9.

27. Jerry Cole, even if he would have been an actual employee, had voluntarily rejected coverage, as is his right under Illinois law, and the policy does not apply to his "employment".

COUNT III - Late Notice

28. Allegations in paragraphs 1-19 are incorporated as if set forth verbatim herein.

29. Pleading in the alternative, without prejudice to the foregoing but in addition thereto, the insured's failure to timely report the accident and otherwise timely report, provide information to the insurer, and to otherwise cooperate precludes coverage for these claims.

30. Part Four of the Policy requires the insured to tell its insurer of an injury “at once” and to give the insurer and its investigators names and addresses of witnesses, as well as other information that the insurer specifies. Exhibit 1, page 4 of 6, Part Four.

31. Area #1 was required to:

3. Promptly give us all notices demands and legal papers related to the injury claim, proceeding or suit.
4. Cooperate with us and assist us, as we may request, in the investigation, settlement or defense of any claim, proceeding or suit.

Exhibit 1, form WC 00 00 00 (C), Part Four, pages 4-5 of 6.

32. Area #1 failed to provide Riverport with timely notice as is required by the policy, leading to prejudice to the insurer because no timely investigation was conducted regarding the facts and circumstances of Mr. Cole’s death and his relationship with Area #1.

WHEREFORE, Plaintiff Riverport Insurance Company respectfully prays for entry of judgment finding and declaring the following:

A. Jerry A. Cole elected not to be covered for workers compensation claims pursuant to the Riverport Insurance Policy, that election is allowed pursuant to Illinois law, 820 ILCS 305(3)(b)(17), and is hereby enforced;

B. Alternatively, that Area #1 Outdoor Club failed to timely notify Plaintiff of the accident involving Jerry A. Cole, and otherwise timely provide information as required by the insurance policy;

C. Count I - Plaintiff has no duty to defend Area #1 Outdoor Club against the claim filed by Shirley Cole in the Illinois Workers Compensation Commission for benefits due to, arising from, or connected with Jerry Cole’s death;

D. Count I - Plaintiff has no duty to pay any workers compensation death or any other benefits to any surviving dependents of Jerry Cole, including those connected with or arising from any action in the Workers Compensation Commission;

E. Count II - Plaintiff has no duty to defend the lawsuit of *Cole v. Area #1 Outdoor Club* filed in the Circuit Court of the Twelfth Judicial Circuit, Will County, Illinois, Case No. 19 L 302;

F. Count II - Plaintiff has no duty to indemnify Area #1 Outdoor Club for any judgment or settlement to settle any claims asserted in the Will County lawsuit identified in "C" immediately above;

G. Award Plaintiff its costs and expenses as provided by Rule and/or Statute;

H. Award any other and further relief to which this Honorable Court finds Plaintiff entitled.

Respectfully submitted,
RIVERPORT INSURANCE CO.

By: /s/ Terry A. Fox
One of Its Attorneys

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Plaintiff's Disclosure Statement Pursuant to LR 3.2

Plaintiff Riverport Insurance Company is owned by W.R. Berkley Corporation, a publicly traded company. Attached hereto as Exhibit A is the disclosure of all owned companies and subsidiaries attached to W.R. Berkley's 10k report for the year ending 12/31/19.

Respectfully submitted,
RIVERPORT INSURANCE CO.

By: /s/ Terry A. Fox
One of Its Attorneys

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Chicago, IL 60604
Tel. – (312) 782-4700

Subsidiaries of the Registrant (as of December 31, 2019). Ownership is 100% unless otherwise indicated.

<u>Entity Name</u>	<u>Domicile</u>
120dB Films Capital, LLC (90% ownership)	Delaware
120dB Films Lending, LLC	Delaware
27 Leadenhall Street Properties Limited	Jersey
34 Leadenhall Street Limited	Jersey
52 Lime Street Management Limited	United Kingdom
860 Development Co LLC	Delaware
860 Washington Street LLC (75% ownership)	Delaware
Abercrombie Textiles, LLC	Delaware
Acadia Insurance Company	Iowa
Acadia Insurance Group, LLC	Delaware
Admiral Indemnity Company	Delaware
Admiral Insurance Company	Delaware
Admiral Insurance Group, LLC	Delaware
All American Agency Facilities, Inc.	Delaware
All Claims of Nevada, Inc.	Nevada
American Mining Insurance Group, LLC	Delaware
Armada Insurance Services, Inc.	California
Banner Aerospace, Inc.	Delaware
Berkley Accident and Health, LLC	Delaware
Berkley Administrators of Connecticut, Inc.	Delaware
Berkley Alliance Managers, LLC	Delaware
Berkley Alternative Markets Insurance Services, LLC	Delaware
Berkley Argentina de Reaseguros S.A.	Argentina
Berkley Asset Protection Underwriters, LLC	Delaware
Berkley Assurance Company	Iowa
Berkley Aviation, LLC	Delaware
Berkley Canada Inc.	Canada
Berkley Capital Investors, LP	Delaware
Berkley Capital, LLC	Delaware
Berkley Casualty Company	Iowa
Berkley Connect Insurance Solutions, LLC	Delaware
Berkley Custom Insurance Managers, LLC	Delaware
Berkley Dean & Company, Inc.	Delaware
Berkley European Brokers AS	Norway
Berkley European Underwriters AS	Norway
Berkley Facultative Reinsurance Services, LLC	Delaware
Berkley FinSecure, LLC	Delaware
Berkley Global Underwriters, LLC	Delaware
Berkley Healthcare Professional Insurance Services, LLC	Delaware
Berkley Insurance Company	Delaware
Berkley Insurance Company – Escritorio De Representacao do Brasil Ltda.	Brazil
Berkley Insurance Services, LLC	Delaware
Berkley International Aseguradora de Riesgos del Trabajo S. A.	Argentina
Berkley International Brasil Participacoes Ltda.	Brazil
Berkley International Compania de Servicios Mexico, S. A de C. V.	Mexico
Berkley International Compania de Servicios Uruguay, S.A.	Uruguay

Berkley International do Brasil Seguros S. A.	Brazil
Berkley International Holdings, LLC	Delaware
Berkley International Latinoamerica S. A.	Argentina
Berkley International Puerto Rico, LLC	Puerto Rico
Berkley International Seguros Colombia S.A.	Colombia
Berkley International Seguros, S. A. (99.59% ownership)	Argentina
Berkley International Seguros, S. A. (Uruguay)	Uruguay
Berkley International Fianzas Mexico S.A. de C.V.	Mexico
Berkley International Seguros Mexico S.A. de C.V.	Mexico
Berkley International, LLC	New York
Berkley Latin America and Caribbean Managers, LLC	Delaware
Berkley Life and Health Insurance Company	Iowa
Berkley Life Sciences, LLC	Delaware
Berkley London Holdings, Inc.	Delaware
Berkley LS Insurance Solutions, LLC	Delaware
Berkley Managers Insurance Services, LLC	Delaware
Berkley Mid-Atlantic Group, LLC	Delaware
Berkley National Insurance Company	Iowa
Berkley Net Underwriters, LLC	Delaware
Berkley North Pacific Group, LLC	Delaware
Berkley Offshore Underwriting Managers UK, Limited	United Kingdom
Berkley Offshore Underwriting Managers, LLC	Delaware
Berkley Oil & Gas Specialty Services, LLC	Delaware
Berkley Product Recall Insurance Agency, LLC	Delaware
Berkley Professional Liability UK, Limited	United Kingdom
Berkley Professional Liability, LLC	Delaware
Berkley Program Specialists, LLC	Delaware
Berkley Public Entity Managers, LLC	Delaware
Berkley Re America, LLC	Delaware
Berkley Re Direct, LLC	Delaware
Berkley Re UK Limited	United Kingdom
Berkley Regional Insurance Company	Iowa
Berkley Regional Insurance Services, LLC	Delaware
Berkley Regional Specialty, LLC	Delaware
Berkley Risk Administrators Company, LLC	Minnesota
Berkley Risk Administrators of Texas, Inc.	Texas
Berkley Risk Services of Vermont, Inc.	Delaware
Berkley Risk Solutions, LLC	Delaware
Berkley Select, LLC	Delaware
Berkley Southeast Insurance Group, LLC	Delaware
Berkley Specialty Insurance Company	Delaware
Berkley Specialty Insurance Services, LLC	Delaware
Berkley Specialty Underwriting Managers, LLC	Delaware
Berkley Surety Group, LLC	Delaware
Berkley Technology Services LLC	Delaware
Berkley Technology Underwriters, LLC	Delaware
Berkley Ventures, LLC	Delaware
BI China, Limited	Hong Kong
BIA Japan Services GK	Japan
BIL Advisors, LLC	Delaware

Breckenridge Insurance Group, Inc.	Colorado
Breckenridge Insurance Services, LLC	California
Breckenridge IS, Inc.	Delaware
BXM Insurance Services, Inc.	Delaware
Carolina Casualty Insurance Company	Iowa
Carolina Casualty Insurance Group, LLC	Delaware
CC Equity Holdings, LLC	Delaware
CC Investors, LLC	Delaware
Center Place Holdings LLC (92.59% ownership)	Delaware
CGH Claims Service, Inc.	Pennsylvania
CGH Insurance Group, LLC	Alabama
Clermont Insurance Company	Iowa
Clermont Specialty Managers, Ltd	New Jersey
Commodore Re Management Corporation	New Jersey
Continental Western Group, LLC	Delaware
Continental Western Insurance Company	Iowa
Cornerstone Securityholder Representative, LLC	Delaware
Corporate Imaging Concepts, LLC (82.06% ownership)	Delaware
Cotasy Corporation S. A.	Uruguay
CPT Equity LLC	Delaware
Crypton Investment Holdings LLC (89.5% Owned)	Delaware
Crypton LLC	Michigan
Crypton-NewCo Real Estate LLC	Delaware
East Isles Reinsurance, Ltd.	Bermuda
eCompanyStore, LLC	Delaware
Facultative Resources, Inc.	Connecticut
Firemen's Insurance Company of Washington, D.C.	Delaware
Franchise Credit LLC	Delaware
Gemini Insurance Company	Delaware
Gemini Transportation Underwriters, LLC	Delaware
Great Divide Insurance Company	North Dakota
Greenwich AeroGroup Brazil Holdings, Inc.	Delaware
Greenwich AeroGroup Brazil Leasing, Inc.	Delaware
Greenwich AeroGroup International, Inc.	Delaware
Greenwich AeroGroup Serviços de Aviação do Brazil SA	Brazil
Greenwich AeroGroup, Inc.	Delaware
Greenwich Knight Insurance Company	Bermuda
GRG Investment Holdings, Ltd	Cayman Islands
Guangzhou Meridian Chemical Limited	China
Helivia Aero Taxi SA	Brazil
Helivia Participações do Brasil Ltda	Brazil
Insurance Networks Alliance, LLC	Delaware
Interlaken Capital Aviation Holdings, Inc.	Delaware
Interlaken Capital Aviation Services, Inc.	Delaware
Intrepid Direct Insurance Agency, LLC	Kansas
Intrepid Insurance Company	Iowa
Jersey International Brokerage Corporation	New Jersey
Key Care, LLC	North Carolina
Key Risk Insurance Company	Iowa
Key Risk Management Services, LLC	Delaware

Key Risk Underwriting Managers, LLC	Delaware
Lavalier Insurance Services, LLC	Delaware
Lex NY Equities LLC	Delaware
Loan Opportunity Fund I, LLC	Delaware
MADA Reciprocal Services, Inc.	Minnesota
Magaverse, Limited	Hong Kong
Maine Compensation Services, Inc.	Maine
Masterclass, Limited	Hong Kong
Mgaero LLC	Delaware
Middle Patent Capital, LLC	Delaware
Midwest Employers Casualty Company	Delaware
Midwest Employers Casualty Group, LLC	Delaware
Midwest Employers Services, LLC	Delaware
Mining Insurance Markets, Inc.	Alabama
Monitor Liability Managers, LLC	Delaware
MPC Bloomington LLC	Delaware
MPC Memphis HI LLC	Delaware
Nano-Tex Asia Limited	Hong Kong
Nano-Tex LLC	Michigan
Nautilus Excess Insurance Agency, LLC	Delaware
Nautilus Insurance Company	Arizona
Nautilus Insurance Group, LLC	Delaware
Northwest International Underwriting Manager, Inc.	Washington
Overby-Seawell Company	Georgia
Platinum Program Managers & Insurance Services, Inc.	California
Preferred Employers Group, LLC	Delaware
Preferred Employers Insurance Company	California
Professional Aircraft Accessories, Inc.	Delaware
Professional Aviation Associates, Inc.	Georgia
Queen's Island Insurance Company, Ltd.	Bermuda
Rasmussen Agency, Inc.	New Jersey
Regional Excess Underwriters, LLC	Delaware
Reinserco, Inc.	New Jersey
Riverport Insurance Company	Iowa
Riverport Insurance Services, LLC	Delaware
RPW Equity LLC	Delaware
Select Marketing Insurance Services, LLC	California
Signet Star Holdings, Inc.	Delaware
SilverCap-Greenwich, LLC (98.8% ownership)	Delaware
Southeastern Underwriters, Inc.	Virginia
StarNet Insurance Company	Iowa
Starnet Insurance Services, LLC	Delaware
Steamboat Asset Management, LLC	Delaware
Steamboat Opportunity Partners, LLC	Delaware
Summit Aviation, Inc.	Delaware
Surety-Pro Services, Inc.	Delaware
Target Markets, LLC	Delaware
Target Programs, LLC	Delaware
Tri-State Insurance Company of Minnesota	Iowa
Union Insurance Company	Iowa

Union Standard Insurance Group, LLC	Delaware
Union Standard Management Company, Inc.	Texas
Vela Insurance Services, LLC	Delaware
Verus Underwriting Managers, LLC	Delaware
W. R. Berkley Europe AG	Liechtenstein
W. R. Berkley European Holdings AG	Switzerland
W. R. Berkley European Services GmbH	Switzerland
W. R. Berkley London Holdings, Limited	United Kingdom
W. R. Berkley London Staff, Limited	United Kingdom
W. R. Berkley Mexico, S. A. de C. V.	Mexico
W. R. Berkley Spain, S. L. U.	Spain
W. R. Berkley Syndicate Holdings Limited	United Kingdom
W. R. Berkley Syndicate Limited	United Kingdom
W. R. Berkley Syndicate Management Limited	United Kingdom
W. R. Berkley UK Limited	United Kingdom
Western Aircraft, Inc.	Nevada
Western Pinnacle Insurance Services, Inc.	California
WRBC Aviation Leasing, LLC	Delaware
WRBC Corporate Member Limited	United Kingdom
WRBC Development UK Limited	United Kingdom
WRBC Services, Limited	United Kingdom
WRBC Support Services, LLC	Delaware
WRBC Transportation, Inc.	Delaware